

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

**Writ Appeal Nos.709, 710, 1047, 1048, 1049, 1052, 1053, 1054,
1055, 1056, 1057, 1058, 1059, 1060, 1061, 1080, 1089, 1090, 1142,
1143, 1151, 1152, 1153, 1154, 1155, 1156 of 2006**

Writ Appeal (SR) Nos.68863 and 68866 of 2006

And

Writ Petition (SR) No.72636 of 2006

Writ Appeal No.709 of 2006

Between:

Government of Andhra Pradesh,
Represented by its Prl. Secretary to Government,
Panchayat Raj & Rural Development Department,
Secretariat, Hyderabad and others

...Appellants

And

N. Sekhar and others

... Respondents

Counsel for the appellants:

Shri C.V. Mohan Reddy,
Advocate General, and
Government Pleader for

Panchayat Raj

Counsel for respondent Nos.1
and 2:

Shri S. Ramachandra Rao,
Senior Advocate assisted by
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Advocate

Counsel for respondent No.3:

Shri V.V. Prabhakar Rao

Writ Petition (SR) No.72636 of 2006

Between:

The Telugu Desam Party

.....Petitioner

And

Government of Andhra Pradesh & others.

.....Respondents

Counsel for the petitioner:

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Counsel for respondent No.3:

Shri V.V. Prabhakar Rao

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:: JUDGMENT ::

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December 18, 2006

Per G.S. Singhvi, C.J.

By this order, we are disposing of the writ appeals filed by the State of Andhra Pradesh and its functionaries, Andhra Pradesh State Election Commission (for short, 'the State Commission') and some private individuals against order dated 20-6-2006 passed by the learned Single Judge in Writ Petition No.10965 of 2006 – N. Sekhar v.

The Government of A.P. and others and batch whereby he quashed notification dated

10-6-2006 issued by the State Commission under Article 243K of the Constitution of India read with Section 201 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the 1994 Act') and Rule 4 of the Andhra Pradesh Panchayat Raj (Conduct of Elections) Rules, 2006 for election of the members of Zilla Parishad Territorial Constituencies (ZPTCs) and Mandal Parishad Territorial Constituencies (MPTCs) except those specified in the notification, as also electoral lists prepared in furtherance of that notification. Simultaneously, we are disposing of the writ petition filed by Telugu Desam Party for restraining the State Commission from issuing notification for the purpose of holding elections to the Gram Panchayats in the State till the preparation of electoral rolls in accordance with the provisions of Article 243K read with Sections 11, 12 and 201 of the 1994 Act.

Before advertng to the factual matrix and the points raised by the parties in support of their respective cases, we deem it proper to briefly notice the scheme of the constitutional and statutory provisions, which have bearing on the decision of questions arising in the appeals and the writ petition.

On 26th January, 1950, the people of India solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity, and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

By the Constitution (Forty-second Amendment) Act, 1976, the words "Sovereign, Socialist, Democratic Republic" were substituted for the words "Sovereign Democratic Republic" and the words "unity and

integrity of the Nation” were substituted for the words “unity of the Nation”.

The provisions contained in Part III of the Constitution represent basic rights guaranteed to the individuals and specified classes and groups. The provisions of Part IV, which have been described as Directive Principles of State Policy obligates the State to take legislative and executive measures to ameliorate the conditions of weaker sections and have-nots of the society and to create a climate in which people belonging to different hues, classes and categories can aspire to enjoy various freedoms and fundamental rights as is done by the haves of the society. One of the goals set out in Article 40 postulates organisation of Village Panchayats. This Article ordains the State to take steps to organise Village Panchayats and confer upon them with such powers and authority as may be necessary to enable them to function as units of self-government. Unfortunately, despite the enactment of various legislations by the State Legislatures with the object of making the Panchayats self-sufficient so that they could function for the benefit of larger segment of the society living in rural areas, the goal set out in Article 40 remained a distant reality. This was largely due to lack of political will and commitment and an executive apparatus, which did not want to share power with the people at the grass roots of the democracy. The unimaginative policies of the government and total lack of apathy towards people of rural India widened the gulf between the urbanites and the ruralites. With a view to bridge this gap and bring those living in rural areas in the national main stream so that they could avail the benefits of the material progress made by the nation in the field of science, technology etcetera, the Parliament enacted the Constitution (Seventy-third Amendment) Act, 1992 and inserted Part IX [Articles 243 to 243-

O] in the Constitution. By this amendment, the panchayats have been declared as units of self-government and co-equal partners in the governance of the nation.

Clause (d) of Article 243 defines the term “Panchayat”, as an institution of self-government constituted under Article 243B for the rural areas. Article 243B provides for constitution of Panchayats. Article 243C relates to composition of Panchayats. Article 243D regulates reservation of seats for Scheduled Castes and Scheduled Tribes. Article 243E prescribes duration of Panchayats. Article 243G enumerates power, authority and responsibilities of Panchayats. Article 243H contemplates that the Legislature of the State may, by law, authorize a Panchayat to levy, collect and appropriate taxes, duties, tolls and fee. It also postulates making of a provision for grant-in-aid to the Panchayats and constitution of panchayat fund. Article 243-I provides for constitution of Finance Commission to review financial position of the Panchayats and to make recommendations to the government on various matters specified in that article. Article 243K regulates elections to the Panchayats. Article 243M declares that provisions of Part IX shall not apply to the Scheduled Areas. Clause (4) thereof empowers the Legislature of a State to enact law for extending the provisions of Part IX to the Scheduled Areas and Tribal Areas. Article 243N, which begins with a non-obstante clause provides for continuation of the existing laws for a period of one year or till the amendment or repeal thereof. Article 243-O, which too begins with a non-obstante clause, contains a bar to the Court’s interference in electoral matters.

In order to bring the existing legislations in tune with the provisions contained in Part IX of the Constitution, the Andhra Pradesh State Legislature enacted the 1994 Act and simultaneously repealed

the Andhra Pradesh Gram Panchayats Act, 1964, the Andhra Pradesh Mandal Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986 and the Andhra Pradesh Local Bodies Electoral Reforms Act, 1989. Part II of the 1994 Act contains provisions relating to constitution, administration and control of Gram Panchayats. Section 8 lays down that all the members of Gram Panchayat shall be elected by the registered voters in the ward by the method of secret ballot. Section 9 provides for reservation of seats for Scheduled Castes, Scheduled Tribes, Backward Classes and Women. Section 11 contains the procedure for preparation and publication of electoral roll for a Gram Panchayat. Sections 13 and 14 regulate the term of office of members and Sarpanchas and Section 15 provides for reservation of office of Sarpanch. Part V of the 1994 Act contains provisions relating to constitution of State Election Commission, conduct of elections and election offences. Section 233 contains a prohibition against challenge to elections except by way of an election petition. Part VI-A which was added to the 1994 Act by Andhra Pradesh Act No.7 of 1998 contains special provisions relating to the Panchayats, Mandal Parishads and Zilla Parishads located in the Scheduled Areas. Section 268 empowers the government to make rules to carry out all or any of the purposes of the Act.

The 1994 Act was amended by the Andhra Pradesh Panchayat Raj (Third Amendment) Act, 2000 and provisions relating to elections, including sub-sections (1), (2) and (3) of Section 11, were amended. This was done in the backdrop of the meeting held on 18-4-2000 at New Delhi which was attended by Chief Election Commissioner of India and State Election Commissioners and where the proposal of the Election Commission of India to have a common electoral roll for all elections was deliberated.

In exercise of the power vested in it under Section 268 (2) (i) read with Section 11 and Sections 151 (2) and 179 (2) of the 1994 Act, the State Government issued the following Government Orders (G.Os.):

- 1) G.O.Ms.No.879, PR, RD & R (Elecs.I) Department, dated 3-12-1994 whereby the rules framed for preparation and publication of electoral rolls for a Gram Panchayat or any portion thereof were notified;
- 2) G.O.Ms.No.898, PR, RD & R (Elecs.I) Department, dated 10-12-1994 whereby various officers of the district were designated as Assistant Electoral Registration Officer, Electoral Registration Officer, Appellate Officer and District Election Officer.
- 3) G.O.Ms.No.913, PR, RD & R (Elecs.I) Department dated 21-12-1994 whereby the period of limitation was prescribed for filing appeal against the order of the Electoral Registration Officer.
- 4) G.O.Ms.No.923, PR, RD & R (Elecs.I) Department, dated 28-12-1994 whereby it was laid down that the provisions of Sections 11 and 12 shall apply mutatis mutandis for the purpose of preparation and publication of electoral roll for the election of the members of Mandal Parishads and Zilla Parishads.
- 5) G.O.Ms.No.254, PR, RD & R (Elecs.) Department, dated 4-8-2000 vide which the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000 (for short, 'the 2000 Rules') were notified and G.O.Ms.Nos.879, 898, 913 and 923 were superceded.

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The background facts:

On 27-9-2005, the State Commission issued Press Note

No.1424/SEC-F1/2005 and notified the order passed by the Election Commission of India for summary revision of assembly electoral rolls with reference to 1-1-2006 as the qualifying date and called upon the political parties and general public to check the assembly electoral rolls and make necessary claims/objections for inclusion and deletion. In the press note, it was clearly mentioned that the same will be used as mother rolls for preparation of electoral rolls for panchayat elections to be held in 2006. For the sake of convenient reference, the relevant extracts of the press note are reproduced below:

“The Election Commission of India ordered special summary revision of assembly electoral rolls with reference to 1-1-2006 as qualifying date. The following schedule was given for the revision process.

- | | |
|---|--|
| 1. Draft publications of rolls on - | 20-10-2005
(Thursday) |
| 2. Period for filing claims and objections and reading of relevant part/section of electoral roll in gram sabha/urban local bodies and resident welfare association meetings etc. - | 20-10-2005
(Thursday)
to
19-11-2005
(Saturday) |
| 3. Special campaign dates for receiving claims and objections at all designated locations - | 29-10-2005
(Saturday)
30-10-2005
(Sunday)
12-11-2005
(Saturday)
13-11-2005
(Sunday) |

- | | |
|--|--------------------------|
| 4. Disposal of claims and objections by - | 22-12-2005
(Thursday) |
| 5. Preparation and printing of supplements and additions, deletions and corrections by - | 20-1-2006
(Friday) |
| 6. Final publication of electoral rolls on - | 24-1-2006
(Tuesday) |

As per the provisions of the Acts governing local bodies, the wardwise electoral rolls thereof are prepared before each ordinary and casual election **duly adopting the latest assembly electoral rolls as mother rolls.**

There is no provision in Acts governing local bodies for suo motu inclusion or deletion of names in the electoral roll of local bodies. However, any inclusion or deletion ordered by the Electoral Registration Officer of the Assembly Constituency concerned under Sections 22 and 23 of the R.P. Act, 1950 up to the date of election notification of any local body shall only be carried out in the electoral roll of the local body concerned.

The ordinary elections to mandal parishads, zilla parishads and gram panchayats are scheduled to be held during the middle of the year 2006 as the term of the existing bodies will be completed in July/August, 2006. The Assembly electoral rolls now prepared and published by the ECI with reference to 1-1-2006 as qualifying date are to be adopted as mother rolls for preparation of electoral rolls for election to panchayat raj bodies.

During the recent elections to municipal bodies, some of the political parties complained that there were discrepancies in the wardwise electoral rolls of the municipal bodies and that sufficient time was not given for eligible persons to enroll themselves in the assembly electoral roll and consequently the same deficiencies also got reflected in the local body electoral roll.

Therefore, the State Election Commission hereby appeals to all the political parties and general public to check the Assembly electoral rolls that are undergoing special revision as per the above schedule issued by the Election Commission of

India with reference to 1-1-2006 as qualifying date and make necessary claims and objections for inclusion and deletion wherever necessary as these latest rolls will be used as mother rolls for preparation of electoral rolls for panchayat raj elections due to be held in the year 2006.”

The aforementioned press note was followed by letter dated 24-10-2005, which was sent by the Secretary of the State Commission to the State Presidents and General Secretaries of all recognized and registered political parties to motivate the public to file necessary claims and objections for inclusion and deletion of names.

After about seven months, the State Commission issued Notification No.194/SEC-B2/2006 whereby the District Panchayat Officers were directed to prepare and publish on 8-5-2006 the electoral rolls. The relevant portion of that notification is reproduced below:

“STATE ELECTION COMMISSION

3rd Floor, Buddha Bhavan, M G Road, Secunderabad – 500 003.

NOTIFICATION

No.194/SEC-B2/2006

Dated: 01.5.2006

In exercise of the powers conferred under Article 243K of the Constitution of India read with Section 11 of Andhra Pradesh Panchayat Raj Act, 1994 and the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000, issued thereunder, the State Election Commission, hereby, directs all the District Panchayat Officers in the State to prepare and publish on **8.5.2006**, the electoral rolls of all the Gram Panchayats in their respective districts with reference to 1.1.2006 as the qualifying date duly indicating the Ward division as required under Rule 5 of the said rules in Form I thereof.”

The Secretary of the State Commission then issued press note dated 12-5-2006 incorporating therein the substance of notification

dated 1-5-2006. He also clarified that Section 11 of the 1994 Act and the 2000 Rules do not provide for direct inclusion or deletion of any name from the panchayat electoral roll and any person desirous of inclusion or exclusion must lodge his claim or objection under the Representation of People Act, 1950 and the Registration of Electors Rules, 1960. For the sake of convenient reference, the relevant extracts of press note dated 12-5-2006 are reproduced below:

“The electoral rolls of all gram panchayats in the State have been prepared in accordance with the provisions of Section 11 of Andhra Pradesh Panchayat Raj Act, 1994 and Andhra Pradesh Panchayat Raj (Preparation and publication of electoral rolls) Rules, 2000 issued thereunder by adopting the existing entries in the relevant part of latest Assembly Electoral Rolls (with reference to 1-1-2006 as qualifying date) and were published by the District Panchayat Officers concerned in the respective gram panchayats on 08-5-2006. These electoral rolls will be utilized in the forthcoming elections to Panchayat Raj Bodies.

The above said provisions do not provide for direct inclusion or deletion of any name from the panchayat electoral rolls. Any person who wishes to lodge any claim for inclusion of his/her name or any objection to the inclusion of a name or any objection to the particulars in any entry in the gram panchayat electoral roll, shall first get such claim or objection settled with reference to corresponding entry in the electoral roll of the Assembly Constituency concerned by lodging suitable claim or objection under the provisions of Representation of People Act, 1950, and the Registration of Electors Rules, 1960, made thereunder before the Electoral Registration Officer of the Assembly Constituency concerned. Such claims and objections can be lodged with either Electoral Registration Officer (Revenue Divisional Officer) or Assistant Electoral Registration Officer (Mandal Revenue Officer concerned).

All orders of inclusions, deletions or corrections in the electoral rolls of the Assembly Constituency issued on the basis of such claims and objections by the Electoral Registration Officer till the date of issue of election notification for the

Panchayat Raj Body concerned will be duly carried out in the electoral roll of the gram panchayat concerned. The general public and political parties are requested to avail this opportunity to verify the electoral rolls of the gram panchayats and take remedial action as explained above.”

It appears that after publication of electoral rolls, a number of complaints were made by the political parties and general public about errors and deviations in the electoral rolls. After taking cognizance of those complaints, the State Commission issued Circular dated 16-5-2006 whereby the District Collectors were directed to ensure that the entries in the electoral roll of the Assembly Constituency are truly and correctly reflected in the electoral rolls published for the gram panchayats. This was reiterated in letter No.194/SEC-B2/2006 dated 22-5-2006 vide which Secretary of the State Commission again requested the District Collectors, Chief Executive Officers of Zilla Parishads and District Panchayat Officers to thoroughly check the electoral rolls of the gram panchayats and ensure that the entries contained in the Assembly electoral rolls are truly and correctly reflected in the gram panchayat electoral rolls.

After four days, the State Commission issued press note dated 26-5-2006 reiterating its earlier stand that without amendment of the entries contained in the Assembly rolls, exercise for inclusion or exclusion in the gram panchayat electoral rolls cannot be undertaken. Paragraphs 2 and 3 of press note dated 26-5-2006 read as under:

“From the very beginning the State Election Commission has been pro-active to see that electoral rolls are correct and advised the general public and the political parties to file claims and objections for inclusion and deletions wherever necessary as long back as on 27th September, 2005 in a press note. On 24th October, 2005 a separate letter was addressed to all the political parties appealing to them for filing claims and

objections as per the guidelines issued by the Election Commission of India. It was only thereafter the State Election Commission issued notification on 01-05-2006 for publication of electoral rolls on 08-05-2006. As a follow up action, the State Election Commission advised the Collectors to see that the entries in the electoral roll of Gram Panchayat truly and correctly represent the entries in the Assembly electoral rolls. A press note also was given appealing to the general public and political parties to verify the gram Panchayat electoral roll and take remedial action wherever necessary.

The State Election Commission wants to reiterate that by itself under the law it cannot either include or exclude names from the electoral roll. It is for the concerned public to file applications in accordance with the law under the R.P. Act, 1950 and have their names included/excluded in the Assembly electoral rolls in the first instance and thereafter alone the names can be included/excluded in panchayat electoral rolls. To enable this, the State Election ordered publication of the electoral roll on 08-05-2006 itself leaving ample time to the general public and political parties to see that applications are filed within time for inclusions and exclusions. The State Election Commission has therefore done everything necessary, alerted the political parties, general public and issued strict instructions to the Collectors in this regard. Any inclusions and exclusions effected in the Assembly electoral roll till the date of election notification for Panchayat Raj bodies will be carried out in the Panchayat electoral rolls." (Emphasis added)

The process initiated by the State Commission for preparation and publication of the electoral rolls generated a lot of litigation. Between 23rd May and 29th May, 2006, a large number of writ petitions were filed questioning the electoral rolls and determination of the MPTCs. In the writ petition filed by him, which was registered as Writ Petition No.10965 of 2006, Sri N. Sekhar prayed for grant of a declaration that the action of the

respondents to delete the names of eligible voters while refusing to exclude the names of ineligible voters from the voters list of Nadendla Mandal, Nadendla Gram Panchayat is illegal. He also sought a declaration that failure of the authorities to pass orders on the appeals preferred by the affected parties is illegal, unjust, discriminatory and violative of Article 14 of the Constitution and the provisions of the 1994 Act and the Rules. He further prayed for issue of a mandamus to the respondents to include the names of eligible voters and exclude those of ineligible voters from the electoral rolls of Nadendla Gram Panchayat before issuing election notification. He also filed an application for issue of a direction to the respondents to undertake revision of electoral roll and not to notify the election till completion of that exercise.

In other petitions, the legality of the exercise undertaken for determination of MPTCs was questioned. It was pleaded that the entire exercise is contrary to Section 150 of the Panchayat Act and Andhra Pradesh Panchayat Raj (Division of Mandal into Constituencies) Rules, 1994 (hereinafter described as 'Mandal Constituencies Rules'). It was further pleaded that the boundaries of the existing MPTCs have been changed in a most arbitrary manner ignoring the criteria specified in Rule 3 of the Mandal Constituencies Rules and in complete disregard of the 'rule of contiguity'. In some cases, panchayats situated at a distance of 10 to 12 kms. have been made part of the particular Mandal Constituencies and area of the adjacent panchayats have been excluded. In some petitions, it was alleged that MPTCs. have been changed/reconstituted/re-organised at the instance of the members of the Legislative Assembly and other politically influential people belonging to the ruling party.

In the miscellaneous petitions filed by the petitioners for grant of

interim relief, the vacation Judge passed order dated 1-6-2006 whereby he directed the Commissioner of Panchayat Raj to undertake an exhaustive review of the reorganization of MPTCs in various Mandals in the State. He also directed the State Election Commissioner (for short 'the SEC') to ensure that sanctity of the voters list published in February 2006 is maintained and examine whether deletions or additions of names subsequent to the publication of list in February 2006 has been made after following the procedure prescribed under Sections 21 and 22 of the Representation of People Act, 1950 (for short 'the 1950 Act').

The abovementioned order of the learned Single Judge was set aside by the Division Bench in W.A. (SR) No.57201 of 2006 and batch, which were, later on, assigned regular numbers. While disposing of the appeals, the Division Bench gave the following directions:

- 1) the respondents in the writ petition should file counter-affidavits latest by 13-6-2006 after supplying advanced copies to the counsel for the petitioners.
- 2) the petitioners shall be free to file rejoinder affidavits, if any, on or before 15-6-2006.
- 3) All the writ petitions be listed before the Single Bench on 16-6-2006.
- 4) The Single Bench shall be free to hear the arguments on the main petitions and decide the same.
- 5) The petitioners shall also be at liberty to make a request for adjudication of their prayer for stay.
- 6) By way of abundant caution, it is clarified that the order passed in these appeals shall not operate as an impediment in the consideration of the writ petitioners' prayer for stay. At the same time, we make it clear that the respondents shall be free

to take all legally permissible objections to the grant of interim relief.

Immediately thereafter, the State Commission issued notification dated 10-6-2006 for holding elections for the members of MPTCs and ZPTCs. In view of this development, Sri N. Sekhar amended the writ petition and made the following prayer:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in deleting the names of the valid voters and refusing to include the eligible voters while refusing to exclude the ineligible voters from the voters list of Nadendla Gram Panchayat and the consequential notification issued on 10/6/2006 as illegal, unjust, arbitrary, discriminatory thereby violative of Article 14 of the Constitution of India and also in violation of Art.243K of the Constitution of India and Sections 11, 12 and 201 of the A.P. Panchayat Raj Act, 1994, and further declare the electoral rolls prepared under the said Rules as illegal, unconstitutional and contrary to the provisions of the Act and void ab initio, if necessary, declare Rules 2 and 5 of the Andhra Pradesh Panchayat Rat (Preparation and Publication of Electoral Rolls) Rules, 2000 issued in G.O.Ms.No.254, dt.4/8/2000 as unconstitutional for violating the constitutional mandate contained in Article 243K and Sections 11, 12 and 201 of the A.P. Panchayat Raj Act and consequentially direct the respondents to prepare fresh electoral rolls for holding Panchayat elections in accordance with the Constitution of India and the provisions of the A.P. Panchayat Raj Act, 1994 and held elections only after that exercise is completed and pass such other order or orders as are deemed fit and proper in the circumstances of the case.”

In the original affidavit dated 29-5-2006 filed by him, Shri N. Sekhar averred that several irregularities have been committed in the

preparation of the electoral rolls of Nadendla Gram Panchayat and that the appeals filed by the aggrieved persons for including and deleting the names of eligible and ineligible voters were deliberately kept pending by the District Collectors and, at the same time, the State Commission was going ahead with the elections. He further averred that the State Government was contemplating to issue election notification in the first week of June, 2006 and pleaded that if the elections are held on the basis of defective voters list, the affected candidates will suffer irreparable loss and injury. In the additional affidavit filed for the purpose of challenging notification dated 10-6-2006, Shri N. Sekhar pleaded that Rules 2 and 5 of the 2000 Rules under which the power of preparing the electoral rolls has been conferred upon the District Panchayat Officers are violative of Article 243K of the Constitution and contrary to Sections 11, 12 and 201 of the 1994 Act. In paragraph 9 of that affidavit, Shri N. Sekhar gave the details of the alleged irregularities in the preparation of the electoral rolls and averred that repeal of the rules framed by the State Government vide G.O.Ms.Nos.879, 898, 913 and 923 has resulted in denial of opportunity to the aggrieved persons to avail remedy against grave irregularities committed in the preparation of electoral rolls.

In the counter-affidavit filed by him, Shri G.N. Rao, Secretary of the State Commission referred to the minutes of the meeting of the State Election Commissioners held on 18-4-2000 and averred that Section 11 of the 1994 Act was amended in the light of the recommendations made by the State Commission. He further averred that with a view to bring the procedure for preparation and publication of the electoral rolls in conformity with the amended Section 11, the 2000 Rules were framed. Shri Rao claimed that the procedure envisaged under Section 11 of the 1994 Act and the

2000 Rules is already obtaining in the States of Assam, Tamil Nadu, West Bengal, Goa, Madhya Pradesh, Orissa and Rajasthan. He then referred to the detailed instructions issued by the State Election Commission vide letter No.194/SEC-B2/2006 dated 18-3-2006 for preparation and publication of electoral rolls of Gram Panchayats and pleaded that in view of the provisions contained in Sections 11, 12 and 201 of the 1994 Act read with the 2000 Rules, which fall within the ambit of Article 243K (4) of the Constitution, the State Commission cannot unilaterally make any addition in or deletion from the electoral rolls. He pointed out that vide notification dated 1-5-2006, the State Commission specifically authorized the District Panchayat Officers to prepare and publish electoral rolls of the gram panchayats in their respective districts with reference to 1-1-2005 as the qualifying date and, therefore, the electoral rolls published on 8-5-2006 cannot be declared illegal.

In a separate counter-affidavit filed by Smt.Koyi Indira Devi, Mandal Revenue Officer, Nadendla Mandal, Guntur District on behalf of respondent Nos.1 to 4, the deponent referred to Rules 20 and 23 of the Registration of Electors Rules, 1960 (for short, 'the 1960 Rules') and averred that out of 848 claims made in Form-6 for inclusion in the voters list, 242 were accepted and the remaining 606 were rejected. Similarly, out of 1259 objections filed in Form-7, 250 were accepted and the remaining 1009 were rejected and, thereafter, the electoral rolls were published on 25-2-2006. Smt.Koyi Indira Devi further averred that 250 appeals were filed before the District Election Authority against deletion of names and 20 other applications were filed, but no appeal was filed against orders passed on the basis of claims made in Form-6. All the appeals were disposed of after getting the matter enquired through six senior officers. Out of 270

appeals/applications for inclusion, 71 were allowed and 199 were rejected. The deponent also averred that where fresh cases were filed before the appellate authority, endorsements were issued to the concerned electoral registration officer. According to her, the petitioner filed 203 Form-6 applications out of which, 43 were accepted and 160 were rejected. Thereafter, supplementary list of inclusions were got printed and sent to the District Panchayat Officer for being annexed to the concerned electoral rolls.

The learned Single Judge, who heard Writ Petition No.10965 of 2006 and batch, took cognizance of orders dated 1-6-2006 and 9-6-2006 passed by the learned Single Judge and the Division Bench, pleadings of the parties in various writ petitions, contentions of the learned counsel, noted the relevant constitutional and statutory provisions, referred to a large number of judicial precedents including the judgment of the five Judges Bench of this Court in **S. Fakruddin v. The Government of A.P.**^[1] and held as under:

- 1) the preparation of the electoral list by the District Panchayat Officers is contrary to Article 243K (1), which is mandatory in character and which casts a duty on the State Commission to exercise the power of the superintendence, direction and control of the preparation of electoral rolls; and
- 2) that an ordinary legislative measure like the one contained in Section 11 (amended) of the 1994 Act cannot over-ride the constitutional mandate under Article 243K.

The learned Single Judge then proceeded to observe:

“On a careful analysis of almost all the decisions on which strong reliance was placed by the respondents which had been repeatedly reiterated and cautioned by the Apex Court that normally the intervention of the Courts at that stage would not be justified. It is true that normally this Court cannot interfere

with the election notification. On a careful analysis of the constitutional provisions, the statutory provisions and the rules governing the field, despite the specific constitutional imperative ordained by Article 243K of the Constitution of India, as can be seen from the stand taken by the commission and also some correspondence which had been placed before this Court, the role played by the commission appears to be very minimal or very nominal. It is also to be pointed out that there is not even a specific direction by the commission to the concerned D.P.Os., to draft the electoral rolls. Though strong reliance was placed on The Representation of the People Act, 1950 and Rules 20 and 23 of Rules 1960 can it be said that by virtue of operation of Section 11, the subordinate legislation vacuum created by virtue of supersession on all the prior G.Os., in G.O.Ms.No.254 had been cured? This is an illegality touching the very root of the matter or just mere an irregularity to be ignored so as not to disturb the further election process. This Court again is inclined to fall back on the decision of the Larger Bench of this Court in ***Fakruddin's case (7 supra)*** this Court is of the considered opinion that despite the fact that the matter was carried to the Apex Court, the views expressed by the Larger Bench are binding on this Court. The supersession of all the prior G.Os., by virtue of G.O.No.254 had created a subordinate legislative vacuum, which cannot be filled up by substitution of yet another legislation or yet another subordinate legislation to be brought in, so as to cure, the mere decision taken at some conference said to have been held cannot be an answer and cannot over-ride the constitutional mandate. Apart from this aspect of the matter, it was also pointed out that the commission had not issued any notification relating to the election authority and there is no election authority as ordained by Section 2(11) of the Act. This stand taken by the Writ Petitioners is not seriously controverted or disputed. The further stand taken by the writ petitioners that absolutely there is no acceptable material placed before this Court to see that at least any minimum control had been exercised by the commission while directing the District Panchayat Officers in drawing the list, the same had not been established. It is also clear from the analysis that the electoral rolls under the Act are different from

the electoral rolls from general elections though adoption may be adopted, when an act is prescribed to be done by the Law in a particular way the same to be done in accordance with the same. No authority need be cited in this regard.”

After making the above quoted observations, the learned Single Judge recorded his conclusion in the following words:

“In view of the fact that by virtue of supersession made in G.O.Ms.No.254 constitutional, legislative and subordinate legislation vacuum had been created the validity or otherwise of the said Rules need not be gone into and hence the said question is left open. However, a Writ of Mandamus as prayed for is issued quashing the consequential notification issued on 10-6-2006 which is long subsequent to filing of the Writ Petitions and just one day after the passing of the order by the Division Bench, as illegal, arbitrary, discriminatory and being violative of Article 14 of the Constitution of India and also violative of Article 243K of the Constitution of India and Sections 11, 12, 201 of the A.P. Panchayat Raj Act 1994 and consequently this Court also declares that all the electoral lists drawn in this regard are not in accordance with the provisions of the Constitution, the statutory provisions, or the subordinate Legislations inasmuch as they suffer from the Constitutional bankruptcy, Legislative bankruptcy and subordinate legislative bankruptcy as well and further direct the respondents to prepare fresh electoral lists in accordance with the provisions of the Constitution and also the provisions of the A.P. Panchayat Raj Act 1994, if need be, by filling the requisite subordinate legislation as well.”

Shri C.V. Mohan Reddy, learned Advocate General invited our attention to the amended prayer clause of Writ Petition No.10965 of 2006 and argued that in the absence of any specific challenge to the vires of Section 11 of the 1994 Act, the learned Single Judge did not have the jurisdiction to declare the electoral rolls prepared in

accordance with the said section and 2000 Rules ultra vires the provisions of Article 243K (1) and strike down notification dated 10-6-2006 on the premise that the same is violative of Articles 14 and 243K of the Constitution and Sections 11, 12 and 201 of the 1994 Act. He further argued that there is no inconsistency between the provisions of Article 243K (1) and the scheme of Sections 11, 12 and 201 of the 1994 Act and the 2000 Rules and the learned Single Judge committed a serious error by holding that the electoral rolls prepared in accordance with Section 11 of the 1994 Act read with Rules 2 to 5 of the 2000 Rules cannot be made basis for holding elections for the panchayats. Learned Advocate General submitted that the decision of the State Commission to entrust the task of preparation and publication of the electoral rolls of the gram panchayat to the District Panchayat Officers was in consonance with Section 11 of the 1994 Act. He then argued that the procedure contained in Rules 2 to 5 of the 2000 Rules for preparation and publication of electoral rolls is subject to the proviso to Section 11 in terms of which any person aggrieved with the electoral roll can lodge claim or file objection under Section 22 or 23 of the 1950 Act read with the 1960 Rules for inclusion in or exclusion from the electoral rolls. Learned Advocate General emphasized that the writ petitioners had not challenged notification dated 1-5-2006 vide which the District Panchayat Officers were directed to publish the electoral rolls on 8-5-2006 and argued that in the absence of any such challenge, the learned Single Judge was not justified in striking down the election notification by erroneously assuming that there was any vacuum or hiatus. Learned Advocate General then referred to the statement of objects and reasons of the Andhra Pradesh Panchayat Raj (Third Amendment) Act, 2000 and argued that the State Commission cannot be said to have surrendered its power under

Article 243K (1) to any other authority simply because the electoral rolls prepared for assembly constituency are made basis for preparation of electoral rolls for the panchayat elections. Shri Reddy extensively referred to various press notes issued by the State Commission, letters written to the political parties and instructions issued to various officers to show that the State Commission had effectively exercised supervisions and control over the preparation and publication of electoral rolls. He strongly relied on the judgment of the Supreme Court in **A.C. Jose v. Sivan Pillai**^[2] and argued that the State Commission is bound by the law enacted by the State Legislature under Article 243K (4) of the Constitution.

Shri V.V. Prabhakar Rao, learned counsel for the State Commission, Shri O. Manohar Reddy and other learned counsel appearing for the private parties adopted the arguments of the learned Advocate General.

Shri S. Ramachandra Rao, Senior Advocate submitted that Article 243K (1) confers exclusive power and imposes duty on the State Election Commissioner to supervise, direct and control the preparation of electoral rolls and in the absence of any valid authorization by the State Election Commissioner, the electoral rolls prepared by the officers of the government cannot be made basis for holding elections to the panchayats. He further submitted that the State Election Commissioner did not authorize anybody to prepare any electoral roll and, as such, the electoral rolls published on 8-5-2006 did not have the constitutional and legal sanctity. He pointed out that notification dated 1-5-2006 issued by the State Commission had not been published in the official gazette and, therefore, the same cannot be treated as a valid authorization for the purpose of preparation and publication of electoral rolls. Another argument of the learned counsel

is that the State does not have any power to prepare the electoral roll and, in the absence of express authorization by the State Election Commissioner, no officer of the government could have been asked to discharge the function of preparing and publishing the electoral roll. Shri Ramachandra Rao then argued that the provision contained in Article 243K (4) is subject to Article 243K (1) and, therefore, Section 11 and the 2000 Rules cannot override the power vested in the State Commission under Article 243K (1). Learned senior counsel heavily relied on the averments contained in the counter-affidavit filed by the Secretary of the State Commission and argued that in view of the assertion made by the State Commission that it is bound to follow the State legislation, the electoral rolls prepared and published by the District Panchayat Officers cannot be treated as having been made under the supervision, direction and control of the State Election Commissioner as per the requirement of Article 243K (1). Learned counsel referred to the provisions of Rules 2 to 5 of the 2000 Rules and argued that the mechanism provided in those rules does not leave any discretion to the State Election Commissioner in the matter of preparation of electoral roll and publication thereof and, as such, the entire exercise was liable to be declared unconstitutional in view of the law laid down by the five Judges Bench in **S. Fakruddin's** case (supra) and the learned Single Judge did not commit any error by striking down notification dated 10-6-2006. Shri S. Ramachandra Rao argued that the procedure prescribed under the 2000 Rules not only results in depriving the State Commission of its constitutional power of supervision, direction and control of the preparation of electoral rolls, but also deprives those who acquire eligibility after the qualifying date to have their name included in the electoral rolls. In support of this argument, learned counsel relied on the judgment of the Supreme

Court in **Chief Commissioner of Ajmer v. Radhey Shyam Dani**^[3] and **S. Fakruddin**'s case (supra). Lastly, he submitted that with the abrogation of the procedure contained in the rules framed vide G.O.Ms.No.898 dated 10-12-1994 read with G.O.Ms.No.913 dated 21-12-1994, the persons aggrieved by the defects and irregularities committed in the preparation and publication of electoral rolls have been rendered remediless.

In Writ Petition (SR) No.72636 of 2006, the petitioner has prayed for restraining the State Commission from taking steps to notify elections to the gram panchayats in the State on the basis of electoral rolls by contending that the same have been declared invalid by the learned Single Judge vide order dated 20-6-2006 passed in Writ Petition No.10965 of 2006. It has further prayed for issue of a direction to the State Commission not to notify election to the gram Panchayats till the electoral rolls are prepared in accordance with Article 243K read with Sections 11, 12 and 201 of the 1994 Act.

Learned counsel for the parties fairly stated that the arguments made by them in Writ Appeal Nos.709 and 710 of 2006 be treated as the arguments for Writ Petition (SR) No.72636 of 2006 as well.

We have thoughtfully considered the entire matter. The questions which require for determination of these appeals are:

- 1) Whether the electoral rolls prepared by the District Panchayat Officers in pursuance of the direction given by the State Commission vide notification No.194/SEC-B2/2006 dated 1-5-2006 are contrary to Article 243K (1) of the Constitution.
- 2) Whether amended Section 11 (1) is ultra vires the constitutional mandate of Article 243K.
- 3) Whether by virtue of the 2000 Rules, constitutional, legislative

and subordinate legislation vacuum has been created and, on that account, notification dated 10-6-2006 was rightly quashed by the learned Single Judge.

For deciding the above questions, it will be useful to notice the relevant provisions of the Constitution, the 1994 Act, the 2000 Rules, the 1950 Act and the 1960 Rules. The same are as under:

Constitution of India:

243K. Elections to the Panchayats:

- 1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
- 2) xxx
- 3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Cl. (1).
- 4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

Andhra Pradesh Panchayat Raj Act, 1994

S.2 Definitions:

(11) "Election Authority" means such authority not being a member or office bearer of any local authority as may, by notification, be appointed by the State Election Commissioner;

25) "notification" means a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly;

(30) "prescribed" means prescribed by the Government by rules

made under this Act;

(34) "qualifying date", in relation to the preparation and publication of every electoral roll under this Act, means the first day of January of the year in which it is so prepared and published.

(35) "registered voter in the Mandal Parishad or registered voter in the District " means a person whose name appears in the electoral roll prepared and published under Section 11 for any Gram Panchayat or Gram Panchayats comprised in the Mandal or as the case may be, in the District;

S.11. Preparation and publication of electoral roll for a Gram Panchayat:

(1) The electoral roll for Gram Panchayat shall be prepared by the person authorised by the State Election Commissioner in such manner by reference to such qualifying date as may be prescribed and the electoral roll for the Gram Panchayat shall come into force immediately *[upon its publication] in accordance with the rules made by the Government in this behalf. The electoral roll for the Gram Panchayat shall consist of such part of the electoral roll for the Assembly Constituency published under the Representation of the People Act, 1950 (Central Act 43 of 1950) as revised or amended under the said Act, up to the qualifying date, as relates to the village or any portion thereof;

Provided that any amendment, transposition or deletion of any entries in the electoral roll, or any inclusion of names in the electoral roll of the Assembly Constituencies concerned, made by the Electoral Registration Officer under Section 22 or Section 23, as the case may be, of the Representation of the People Act, 1950, up to the date of election notification, for any election held under this Act, shall be carried out in the electoral roll of the Gram Panchayat and any such names included shall be added to the part relating to the last Ward.

Explanation: Where in the case of any Assembly Constituency there is no distinct part of the electoral roll relating to the village, all persons whose names are entered in such roll under the registration area comprising the village and whose addresses as entered are situated in the village shall be entitled to be included in the electoral roll for the Gram Panchayat prepared for the purposes of this Act.

2) The electoral roll for a Gram Panchayat, _

(a) shall be prepared and published in the prescribed manner by reference to the qualifying date,

(i) before each ordinary election; and

(ii) before each casual election to fill a casual

vacancy in the Office of the Sarpanch and Member of a Gram Panchayat; and

(b) shall be prepared and published in any year, in the prescribed manner, by reference to the qualifying date, if so directed by the State Election Commission:

Provided that if the electoral roll is not prepared and published as aforesaid, the validity, or continued operation of the said electoral roll, shall not thereby be affected.

3) The electoral roll published under sub section (1) shall be the electoral roll for the Gram Panchayat and it shall remain in force till a fresh electoral roll for the Gram Panchayat is published under this section.

4) The electoral roll for the Gram Panchayat shall be divided into as many parts as there are wards so that each part consists of the voters residing in the concerned ward and for this purpose the electoral roll may be rearranged if such rearrangement is found necessary.

5) Every person whose name appears in the part of the electoral roll relating to a ward shall subject to the other provisions of this Act, be entitled to vote at any election which takes place in that ward while the electoral roll remains in force and no person whose name does not appear in such part of the electoral roll shall vote at any such election.

6) No person shall vote at an election under this Act in more than one ward or more than once in the same ward and if he does so, all his votes shall be invalid.

Explanation: In this section, the expression Assembly Constituency shall mean a constituency provided by law for the purpose of elections to the Andhra Pradesh Legislative Assembly.

S.201.Powers and functions of the State Election Commissioner:

- 1) All elections to the Panchayat Raj Institutions shall be held under the supervision and control of the State Election Commission and for this purpose it shall have power to give such directions as it may deem necessary to the Commissioner, District Collector or any officer or servant of the Government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under this Act.
- 2) The preparation of electoral rolls for the conduct of all elections under the Act shall be done under the supervision and control of the State Election Commission.
- 3) For the purposes of this section the Government shall provide the State Election Commission with such staff as may be necessary.
- 4) On the request of the State Election Commission, the State Government shall place at the disposal of the Commission such staff of the State Government, Gram Panchayats, Mandal Parishads and Zilla Parishads for the purpose of conduct of elections under this Act.
- 5) The State Election Commissioner may, subject to control and revision, delegate his powers to such officers as he may deem necessary.

S.210. Electoral officers and staff etc. deemed to be on deputation

- (1) Any officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of all elections shall be deemed to be on deputation to the State Election Commission for the period during which they are so employed and such officers and staff shall during that period, be subject to the control,

superintendence and discipline of the State Election Commission.

(2) The Returning Officer, Assistant Returning Officer, Presiding Officer, Polling officer and any other officer appointed under this Act, and any police officer designated for the time being by the State Government for the conduct of any elections shall be deemed to be on deputation to the State Election Commission for the period commencing on and from the date of notification calling for such elections and ending with the date of declaration of the results of such elections and such officer shall, during that period, be subject to the control, superintendence and discipline of the State Election Commissioner.

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The Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000:

2. Preparation of Gram Panchayat Electoral Roll:

- 1) The electoral roll of a Gram Panchayat, hereinafter referred to as "the electoral roll", shall be such part of the current electoral roll of the Andhra Pradesh Legislative Assembly Constituency, prepared and published under the Representation of the People Act, 1950 (Central Act 43 of 1950), as relates to the village, which shall be prepared by the District Panchayat Officer, taking into account the various amendments issued to the said electoral roll of the Assembly Constituency, from time to time, as they relate to the village, upto the date of election notification.
- 2) There shall be a separate electoral roll for each Gram Panchayat.

3. Electoral roll for election to the office of Sarpanch:

For the purpose of election of Member and Sarpanch of Gram Panchayat, the roll prepared under rule 2 shall be the electoral roll.

5. Publication of copies of rolls:

- 1) As soon as the roll is prepared in accordance with these rules, the District Panchyat Officer shall, make

arrangements to print or cyclostyle or write in manuscript as many copies of the roll as may be directed by the State Election Commission, from time to time. He shall publish the same for inspection by general public-

- (a) on the notice board kept in the office of the District Panchayat Officer;
- (b) on the notice board kept in the office of the Gram Panchayat; and
- (c) at three conspicuous places in the concerned village.

2) The electoral roll published under sub-rule (1) shall indicate the ward division made under sub-section (4) of Section 11 or as the case may be, under Section 12, of the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994), hereinafter in these rules referred to as "the Act".

3) Upon such publication under this rule, the roll shall be the electoral roll of the Gram Panchayat and shall remain in force till, a fresh electoral roll is prepared and published.

6. Procedure for lodging claims and objections:

All omissions of names in any part of the roll or objections to any entry in the roll, at any point of time after its publication under Rule 5, shall be settled only after a suitable amendment to the relevant entry in the electoral roll of the Legislative Assembly Constituency based on which the Gram Panchayat roll was prepared. Anybody wishing to prefer a claim for inclusion or deletion of any name in the roll or any objection in respect of any entry in the roll so published, shall submit a proper claim or objection under the provisions of the Registration of Electors Rules, 1960 made under the representation of the People Act, 1950 (Central Act 43 of 1950), to the Electoral Registration Officer of the concerned Legislative Assembly Constituency. Subject to the provisions of Section 11 of the Act, and based on the orders of the Electoral Registration Officer of the Assembly Constituency on such claims and objections, the District Panchayat Officer shall carry out

consequential amendments in the Gram Panchayat electoral roll. In case of any clerical or printing error or both, or when the entries deviate from the particulars of the Assembly Electoral roll, the District Panchayat Officer may cause such errors rectified, so as to bring it in conformity with the particulars of the Assembly Electoral roll concerned. However, the District Panchayat Officer shall not resort to suo motu revision of the rolls by way of deletions or additions or modifications.

7. Electoral roll of a Mandal Parishad:

- 1) For purpose of preparation and publication of electoral roll for the election to the office of members of Mandal Parishad the provisions of Sections 11 and 12 of the Andhra Pradesh Panchayat Raj Act, 1994 shall apply mutatis mutandis.
- 2) The electoral roll for the Gram Panchayat prepared and published under Rule 2 shall be arranged Territorial Constituency-wise of the Mandal Parishad by the Mandal Parishad Development Officer and it shall be divided into convenient parts which shall be numbered conveniently. The part of the electoral roll shall be arranged Gram Panchayat-wise in alphabetical order for each Mandal Parishad Territorial Constituency for the purpose of conducting elections of Mandal Parishad Territorial Constituency.
- 3) A copy of such electoral roll in respect of each Territorial Constituency of Mandal Parishad shall be kept open for inspection in the office of the Mandal Parishad concerned.

8. Electoral roll of a Zilla Parishad:-

- 1) For purposes of preparation and publication of electoral roll for the election of member of Zilla Parishad, the provisions of Sections 11 and 12 shall apply mutatis mutandis.
- 2) The electoral roll for the Gram Panchayat prepared and published under Rule 2 shall be arranged for each Mandal which is a Territorial Constituency of the Zilla Parishad by the Chief Executive Officer, Zilla Parishad concerned, and it shall be divided into convenient parts which shall be numbered

conveniently. The part of the electoral roll shall be arranged Gram Panchayat-wise in alphabetical order for each Zilla Parishad Territorial Constituency, for the purpose of conducting elections of Zilla Parishad Territorial Constituency.

3) A copy of such electoral roll in respect of each Territorial Constituency of Zilla Parishad shall be kept open for inspection in the office of the Zilla Parishad concerned.”

Representation of People Act, 1950

S. 13A. Chief Electoral Officers:

- 1) There shall be for each State a chief electoral officer who shall be such officer of government as the Election Commission may, in consultation with that government, designate or nominate in this behalf.
- 2) Subject to the superintendence, direction and control of the Election Commission, the chief electoral officer shall supervise the preparation, revision and correction of all electoral rolls in the State under this Act.

S.13B. Electoral Registration Officers:

- 1) The electoral roll for each parliamentary constituency in the State of Jammu and Kashmir or in a Union Territory not having a Legislative Assembly, shall be prepared and revised by an electoral registration officer who shall be such officer of Government or of a local authority as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate in this behalf.
- 2) An electoral registration officer may, subject to any prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency.

S.22. Correction of entries in electoral rolls.

If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of

the constituency –

- a) is erroneous or defective in any particular,
- b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or
- c) should be detected on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

PROVIDED that before taking any action on any ground under clause (a) or clause (b), or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

S. 23. Inclusion of names in electoral rolls.

- 1) Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.
- 2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

PROVIDED that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

- 3) No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for

the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

Registration of Electors Rules, 1960

10. Publication of roll in draft:

As soon as the roll for a constituency is ready, the registration officer shall publish it in draft by making a copy thereof available for inspection and displaying a notice in Form 5:

- (a) at his office, if it is within the constituency, and
- (b) at such place in the constituency as may be specified by him for the purpose, if his office is outside the constituency.

11. Further publicity to the roll and notice:

The registration officer shall also:

- (a) make a copy of each separate part of the roll, together with a copy of the notice in Form 5 available for inspection at a specified place accessible to the public and in or near the area to which that part relates;
- (b) give such further publicity to the notice in Form 5 as he may consider necessary; and
- (c) supply free of cost two copies of each separate part of the roll to every political party for which a symbol has been exclusively reserved in the State by the Election Commission.

12. Period for lodging claims and objections:

Every claim for the inclusion of a name in the roll and every objection to an entry therein shall be lodged within a period of thirty days from the date of publication of the roll in draft under rule 10, or such shorter period of not less than fifteen days as may be fixed by the Election Commission in this behalf:

PROVIDED that the Election Commission may, by notification in the Official Gazette, extend the period in respect

of the constituency as a whole or in respect of any part thereof.

13. Form for claims and objections.

- (1) Every claim shall be-
 - (a) in Form 6; and
 - (b) signed by the person desiring his name to be included in the roll;
- (2) Every objection to the inclusion of a name in the roll shall be-
 - (a) in Form 7; and
 - (b) preferred only by a person whose name is already included in that roll;
- (3) Every objection to a particular or particulars in an entry in the roll shall be-
 - (a) in Form 8; and
 - (b) preferred only by the person to whom that entry relates.
- (4) Every application for transposition of an entry from one part to another part of the roll shall be in Form 8A;

14. Manner of lodging claims and objections.

Every claim or objection shall-

- (a) either be presented to the registration officer or to such other officer as may be designated by him in this behalf; or
- (b) be sent by post to the registration officer.

17. Rejection of certain claims and objections - Any claim or objection which is not lodged within the period, or in the form and manner, herein specified, shall be rejected by the registration officer.

18. Acceptance of claims and objections without inquiry:

If the registration officer is satisfied as to the validity of any claim or objection, he may allow it without further inquiry after the expiry of one week from the date on which it is entered in the list exhibited by him under clause (b) of rule 16:

PROVIDED that where before any such claim or objection has been allowed, a demand for inquiry has been made in writing to the registration officer by any person, it shall not be allowed without further inquiry.

19. Notice of hearing claims and objections:

(1) Where a claim or objection is not disposed of under rule 17 or rule 18, the registration officer shall-

(a) specify in the list exhibited by him under clause (b) of rule 16 the date, time and place of hearing of the claim or objection; and

(b) give notice of the hearing-

(i) in the case of a claim to the claimant in Form 12;

(ii) in the case of an objection to the inclusion of a name, to the objector in Form 13 and to the person objected to in Form 14; and

(iii) in the case of an objection to a particular or particulars in an entry, the objector in Form 15.

(2) A notice under this rule may be given either personally or by registered post or by affixing it to the person's residence or last known residence within the constituency.

20. Inquiry into claims and objections.

(1) The registration officer shall hold a summary inquiry into every claim or objection in respect of which notice has been given under rule 19 and shall record his decision thereon.

(2) At the hearing, the claimant or as the case may be, the objector and the person objected to and any other person who, in the opinion of the registration officer, is likely to be of assistance to him, shall be entitled to appear and be heard.

- (3) The registration officer may in his discretion-
- (a) require any claimant, objector or person objected to, to appear in person before him,
 - (b) require that the evidence tendered by any person shall be given on oath and administer an oath for the purpose.

21. Inclusion of names inadvertently omitted:

(1) If it appears to the registration officer that owing to inadvertence or error during preparation, the names of any electors have been left out of the roll and that remedial action should be taken under this rule, the registration officer shall-

- (a) prepare a list of the names and other details of such electors;
- (b) exhibit on the notice board of his office a copy of the list together with a notice as to the time and place at which the inclusion of these names in the roll will be considered, and also publish the list and the notice in such other manner as he may think fit; and
- (c) after considering any verbal or written objections that may be preferred, decide whether all or any of the names should be included in the roll.

(2) If any statements under rule 7 are received after the publication of the roll in draft under rule 10, the registration officer shall direct the inclusion of the names of the electors covered by the statements in the appropriate parts of the roll.

22. Final publication of roll:

(1) The registration officer shall thereafter:

- (a) prepare a list of amendments to carry out his decisions under rules 18, 20, 21 and 21A and to correct any clerical or printing errors or other inaccuracies subsequently discovered in the roll;
- (b) publish the roll, together with the list of amendments, by making a complete copy thereof available for inspection and displaying a notice in Form 16 at his office; and

(c) subject to such general or special directions as may be given by the Election Commission supply, free of cost, two copies of the roll, as finally published, with the list of amendments, if any, to every political party for which a symbol has been exclusively reserved by the Election Commission.

(2) On such publication, the roll together with the list of amendments shall be the electoral roll of the constituency.

(3) Where the roll (hereafter in this sub-rule referred to as the basic roll), together with the list of amendments, becomes the electoral roll for a constituency under sub-rule (2), the registration officer may, for the convenience of all concerned, integrate, subject to any general or special directions issued by the Election Commission in this behalf, the list into the basic roll by incorporating inclusion of names, amendment, transposition or deletion of entries in the relevant parts of the basic roll itself in the relevant parts of the basic roll itself, so however that no change shall be made in the process of such integration in the name of any elector or in any particulars relating to any elector as given in the list of amendments.

23. Appeals from orders deciding claims and objections.

(1) An appeal shall lie from any decision of the registration officer under rule 20, rule 21 or rule 21A to such officer of Government as the Election Commission may designate in this behalf (hereinafter referred to as the appellate officer):

PROVIDED that an appeal shall not lie where the person desiring to appeal has not availed himself of his right to be heard by, or to make representations to, the registration officer on the matter which is the subject of appeal.

(2) Every appeal under sub-rule (1) shall be:

(a) in the form of a memorandum signed by the appellant, and

(b) presented to the appellate officer within a period of fifteen days from the date of announcement of the decision or sent to that officer by registered post so

as to reach him within that period.

(3) The presentation of an appeal under this rule shall not have the effect of staying or postponing any action to be taken by the registration officer under rule 22.

(4) Every decision of the appellate officer shall be final, but in so far as it reverses or modifies a decision of the registration officer, shall take effect only from the date of the decision in appeal.

(5) The registration officer shall cause such amendments to be made in the roll as may be necessary to give effect to the decisions of the appellate officer under this rule.

An analysis of some of the above reproduced provisions shows that the superintendence, direction and control of the preparation of electoral rolls and conduct of elections to the “panchayats”, which term means institution of self-government constituted by the State Government at village, intermediate and district level (Article 243B) vests with the State Commission. For discharge of the functions enumerated in clause (1) of Article 243K, the State Commission can request the Governor of the State to provide necessary staff and the latter is required to make such staff available. Clause (4) of Article 243K empowers the State Legislature to enact law and make provisions with respect to all matters relating to, or in connection with, elections to the panchayats. This power is subject to the other provisions contained in the Constitution, which necessarily include clause (1) of Article 243K. Sections 8 to 12, 14 to 20-B, 150 to 156, 179 to 181, 183, 184, 201 and 210 of the 1994 Act, which provide for election of members of Gram Panchayats, Mandal Parishads and Zilla Parishads, reservation of seats, division of Wards and Constituencies, preparation and publication of electoral rolls, qualifications and disqualifications of the candidates and powers and functions of the State Commission constituted under Section 200, fall within the ambit

of Article 243K (4). However, as we are required to decide the issue relating to preparation and publication of electoral rolls only, it is not necessary to dilate on all the provisions and it will be sufficient to direct our attention to some of the definitions, Sections 11, 201 and 210 on the 1994 Act, Rules 2, 3 and 5 to 8 of the 2000 Rules and the related provisions contained in the 1950 Act and the 1960 Rules.

Section 11 of the 1994 Act, as it stood before 1998, provided for preparation of electoral roll by the person authorized by the State Commission. It also mandated that the draft of the electoral roll for the gram panchayat shall consist of such part of the electoral roll for the Assembly constituency published under the Representation of People Act, 1950 as revised or amended under the said Act up to the qualifying date. The electoral roll prepared under Section 11 (1) were to come into force immediately upon its final publication in accordance with the rules made by the State Government in this behalf. For giving effect to the mandate of Article 243K (1) of the Constitution read with Section 200 (1) of the 1994 Act, the Governor of Andhra Pradesh appointed the State Election Commissioner vide G.O.Ms.No.361, PR, RD & R (Elec.I) Department, dated 18-6-1994. The Governor also framed rules for conduct of election of members and Sarpanch of Gram Panchayat, members of Mandal Parishads and members of Zilla Parishads, which were notified under G.O.Ms.No.755, PR, RD & R (MDL-I) Department, dated 30-11-1994. Rule 3 contained in that G.O. recognized the State Election Commissioner as the election authority for the purpose of conduct of elections and declared that the superintendence, direction, control and conduct of elections of Sarpanch etc. shall be his responsibility. Simultaneously, the Secretary of the State Commission was recognized as Deputy Election Authority for the purpose of conduct of elections under the 1994 Act

and it was laid down that the functions of the election authority may also be performed by the Deputy Election Authority, unless contrary was provided. Vide G.O.Ms.No. 879, dated 3-12-1994, the Governor of the State, in exercise of the powers vested in him under Section 268 (1) read with Section 11 of the 1994 Act, made rules for preparation and publication of electoral rolls for gram panchayats. After seven days, the Governor, in exercise of the same power, issued G.O.Ms.No.898, dated 10-12-1994, whereby he designated and appointed various officers to perform the powers and functions specified in that notification. These included District Electoral Officer, Appellate Officer, Electoral Registration Officer and Assistant Electoral Registration Officer. Vide G.O.Ms. No. 913, dated 21-12-1994, the Governor of Andhra Pradesh made rules prescribing the period of limitation for filing appeal against the order passed by the Electoral Registration Officer in the matter relating to inclusion of name in the electoral roll of a gram Panchayat. Rule 2 of those rules provided for disposal of appeal within five days. By G.O. Ms.No.923 dated 28-12-1994, the Governor framed rules and declared that for the purposes of preparation and publication of electoral roll for the election to the office of member of Mandal Parishad, the provisions of Sections 11 and 12 of the 1994 Act shall apply mutatis mutandis.

In **S. Fakruddin's** case (supra), the five Judges Bench of this Court considered the question whether the rules framed by the Governor of the State in exercise of the power vested in him under Section 268 (1) read with Sections 8, 11 to 15, 148, 149, 151, 153, 154, 171, 178, 179, 182 and 183 of the 1994 Act and Rules 3 and 3A contained in G.O.Ms.No.879 dated 3-12-1994 as amended by G.O.Ms.No.72 dated 4-2-1995 are ultra vires the 1994 Act and Article 243K (1) and (4) of the Constitution of India and whether elections

could be held on the basis of electoral rolls prepared in accordance with those rules. The Larger Bench over-ruled the objection to the maintainability of the writ petition in the context of the bar contained in Article 243-O of the Constitution and held that no person other than the one authorized by the State Election Commissioner can be entrusted with the task of preparation and publication of the electoral roll. The Larger Bench further held that the rules notified vide G.O.Ms.No.755 dated 30-11-1994 not only created new authorities for the purposes of Sections 11 and 12 but also took away the discretion of the State Election Commissioner to notify the election authorities; that the rules framed by the government authorizing the District Panchayat Officer to make necessary entries in the electoral roll of the gram panchayat on receipt of orders of the Electoral Registration Officer are ultra vires the 1994 Act and Article 243K (1) of the Constitution. The relevant portions of paragraphs 20, 21 and 22 of the judgment, which contain the reasons assigned by the Larger Bench for invalidating the rules, are as under:

“20. ... Rules in G. O. Ms. No. 755 aforementioned have changed the nomenclature of the State Election Commissioner and divided his functions by creating additional authorities to share his powers -- such as the Secretary of the State Election Commission who is designated as the Deputy Election Authority and the District Collector who is designated as the District Election Authority. The Act has not contemplated any role for persons who are not authorised by the State Election Commissioner or who are not notified by him as the election authority under Section 2 (11) of the Act in the preparation and publication of electoral roll for a Gram Panchayat under Section 11 of the Act and re-arrangement and re-publication of electoral roll under Section 12 in the three situations envisaged therein. Matters falling under Sections 11 and 12 cannot be entrusted to any person who is not authorised by the State Election Commissioner. Any provisions for conducting elections are

required to conform to Section 13 of the Act and the election authority notified by the State Election Commissioner alone is competent to fix the elections subject to the directions of the State Election Commissioner. Rules in G. O. Ms. No. 755 dated 30-11-1994 not only create new authorities for such purposes but take away the discretion of the State Election Commissioner to notify the election authorities. Rules relating to preparation and publication of electoral roll for a Gram Panchayat in G. O. Ms. No. 879 dated 3-12-1994 have introduced the District Panchayat Officer and empowered him to re-arrange the electoral roll for the Gram Panchayat or any part of such roll and publish the same. Any person or authority other than a person authorised by the State Election Commissioner has no role in the preparation and publication of electoral roll and re-arrange as stipulated under Section 11 (1), Section 11 (4) and Section 12 of the Act. Even a person notified as the election authority under Section 2 (11) cannot in the absence of authorisation as contemplated under Section 11 (1) and 12 of the Act proceed to re-arrange the electoral roll.

21. ... The authority in this behalf thus has to be found in the authorisation by the State Election Commissioner and not by the Government or by any other person under the Rules framed by the State Government. Exclusion or inclusion of the name of a voter in the electoral roll will have a bearing upon the electoral roll for the territorial constituency i. e. , the ward under the Act. Such a function can be assigned only to a person authorised by the State Election Commissioner. By naming the District Panchayat Officer as the authority who can re-arrange the electoral roll for the Gram Panchayat or any part of such roll under Rule 3 in G. O. Ms. No. 879 dated 2-12-1994, the Government while exercising its subordinate legislative power have taken away the power of the State Election Commissioner in this behalf and have thus travelled beyond the rule making power. Rule 3, for the said reason, violates Sections 11 and 12 of the Act. They have entered into the domain of the State Election Commission and have assumed a jurisdiction which the law made by the State Legislature has not conferred on them. The theme of the power of the State Legislature to make

laws for elections to Panchayats is fixed by Clause (4) of Art. 243 (K) of the Constitution. Law making power of the State Legislature with respect to all matters relating to or in connection with elections to the Panchayats is limited by the jurisdiction of the State Election Commission under Clause (1) of Art. 243k of the Constitution. Rule 3 evidently has inherent infirmity of being in excess of the competence of the Government of the State. Rule 3A which is introduced by G. O. Ms. No. 72 dated 4-2-1995 is clearly ultra virus Section 11 of the Act. The Electoral Registration Officer can have no role in the preparation of the electoral roll of the Gram Panchayat and thus any power given to him under the Rules to include any names in the electoral roll of a particular territorial constituency or ward will be without jurisdiction. The person authorised by the State Election Commissioner who alone is competent to re-arrange the electoral roll of a territorial constituency or ward as well as the State Election Commissioner are rendered incompetent by a rule which has contemplated an altogether independent mechanism for the inclusion of names in the electoral roll. This rule for the said reason and for the reason that it is the District Panchayat Officer who is asked under this Rule to make necessary entries in the electoral roll of the Gram Panchayat on receipt of the orders of the Electoral Registration Officer has to be declared ultra virus the Act and Art. 243k (1) of the Constitution.

22. The State Election Commission has functioned and it seems has done so from its office at M. G. Road, Secunderabad. It has issued notifications and made communications on the subject of the appointment of the election authorities and for functioning under Section 11 of the Act. Copies of the notifications and some other communications of the State Election Commission are produced before us. Notifications did not bear any number. They are shown on the letter pad of the State Election Commissioner and are signed by the State Election Commissioner. One such notification dated 26-11-1994 issued on 26-11-1994 reads as follows:

"in exercise of the powers vested with the State Election Commissioner under sub-section (i) of Section

201 read with Section 232 of the A. P. Panchayat Raj Act, 1994, all the District Collectors in the State except Hyderabad (Urban) district are hereby appointed as District Election Authorities as per sub-section (ii) of Section 2 of the said Act. They are also hereby authorised to appoint such authorities by notification as shown in the Annexure appended to this notification in their district, for conduct of the First Ordinary Elections to Panchayat Raj Institutions under Section 278 of the said Act."

If we correct the Roman (ii) to read as Arabic (11) and thus the relevant portion of the sentence to read, "all the District Collectors in the State except Hyderabad (Urban) district are. District Election Authorities as per sub-section (11) of Section 2 of the said Act," the Election Commissioner has gone by this notification with Rule 2 (a) of the administrative machinery for the conduct of elections under the Rules in G. O. Ms. No. 755 dated

30-11-1994. He has failed to exercise, it seems, altogether the powers which he was required to exercise and besides the delegation of his powers which rules thrust upon him, he has left the choice of the officers shown in the Annexure for being appointed by the District Collectors for conduct of the First Ordinary Elections. He has done so, it seems only in compliance of the Rule and not in exercise of any independent discretion. The other notification of the same date in the same format reads as follows:

"in exercise of the powers vested with the State Election Commissioner under sub-section (i) of Section 201 read with Section 232 of the A. P. Panchayat Raj Act, 1994, all the District Panchayat Officers in the State are hereby authorised for preparation and publication of electoral rolls for Gram Panchayats as per the provisions contained in the Act under Section 11 and for rearrangement and republication of electoral rolls of the Gram Panchayats as per the provisions contained in Act under Section 12, on behalf of the State Election Commissioner, as shown in the Schedule appended to this Notification, for the purpose of the First Ordinary

Elections Gram Panchayat in their respective districts." He has authorised the District Panchayat Officers for preparation and publication of electoral rolls for Gram Panchayats. The District Panchayat Officer is the person named in Rule 3 of the Rules in G. O. Ms. No. 879 dated 3-12-1994 as the Officer empowered to give effect to the division of the village into wards or to the alteration of the wards or to the variation of the limits, as the case may be, by re-arranging the electoral roll for the Gram Panchayat or any part of such roll and publish the same. In a letter dated 20-5-1994 to the Secretary to Government, Panchayat Raj, the State Election Commissioner has said that the Government have undertaken the re-organisation of the villages into viable units of administration and in the process some Gram Panchayats have been amalgamated and some have been bifurcated and in view of the amalgamation and bifurcation, new Gram Panchayats have been created, this according to the letter, Government have undertaken on the suggestion of the State Election Commission. The letter further says:

"The Commissioner of Panchayat Raj suggested that by invoking provisions of Section 12 of A. P. Panchayat Raj Act, 1994, the State Election Commission can issue order authorising re-arrangement and re-publication of electoral rolls in the Gram Panchayats. The State Election Commission, after careful consideration of the suggestion of Commissioner of Panchayat Raj, feels that provisions of Section 12 do not contemplate of issuance of authorisation for re-arrangement and re-publication of the electoral rolls for the villages thus created. The procedure contemplated in G. O. Ms. No. 899 and G. O. Ms. No. 930 has to be followed. These two G. Os. provide 10 days statutory period of limitation for filing of appeals and 5 days time for the Appellate Authority to dispose of the appeals."

The State Election Commissioner's perception of the law on the subject has given a sanction of the Rules framed by the State Government and destroyed altogether the independent machinery which the Act has envisaged for the preparation and

publication of the electoral roll.”

The State Government and the State Commission challenged the judgment of the Larger Bench before the Supreme Court. The appeals preferred by them were registered as Civil Appeal Nos.9345-9350 of 1995. By order dated 18-10-1995, the Supreme Court allowed the State Commission to declare the result of the election. When the appeals were taken up for final disposal on 8-4-1997, the Supreme Court passed the following order:

“It is agreed that elections are over. The results have been declared. The successful candidates have taken the oath of office. In view of the subsequent events it is not proper for this Court to consider the matters in detail at this stage. It is open to the aggrieved parties, if so advised, to take appropriate proceedings before appropriate forum wherein all the questions raised herein can be raised. If any proceedings are initiated, the appropriate forum will decide the matter as expeditiously as possible unfettered by the Judgment of the high Court. The appeals are dismissed accordingly ”.

In **Prakasam District Sarpanchas Association v. Govt. of A.P.**^[4], a Division Bench of this Court considered whether in view of order dated 8-4-1997 passed by the Supreme Court, the judgment of the Larger Bench in **S. Fakruddin’s** case (supra) could be treated as binding on the State Government. The Division Bench referred to another judgment of the Supreme Court in **Kunhayammed and others v. State of Kerala**^[5] and held that the judgment of the Larger Bench in **S. Fakruddin’s** case (supra) is not available for implementation and is not binding on the respondents. Para 34 of the judgment of the Division Bench, which contain the above enunciation, read as under:

“34. In view of the law laid down by the supreme Court in **Kunhayammed's** case (supra), we have no hesitation to say that the Supreme Court kept all the issues raised before the Special Full Bench of this Court in **Fakruddin's** case (supra) open for fresh adjudication and as such the decision of the special Full Bench in **Fakruddin's** case (supra) merged with the order of the supreme Court dated 8-4-1997 passed in Civil Appeal Nos. 9345-9350/95 and thus the decision rendered by the Special Full Bench of this Court in **Fakruddin's** case (supra) is not available for implementation and is not binding on the respondents.”

If Section 11 of the 1994 Act and the rules framed by the government, which came up for interpretation in **S. Fakruddin's** case (supra) had not been amended, then it could have been possible for the respondents (writ petitioners) to make an attempt to convince us that the view taken by the learned Single Judge should be treated as laying down correct law notwithstanding the judgment of the Division Bench in **Prakasam District Sarpanchas Association v. Government of A.P.** (supra). However, the fact of the matter is that after decision of the appeals filed by the State Government and the State Commission against the judgment of the Larger Bench in **S. Fakruddin's** case (supra), Section 11 of the 1994 Act was amended by the Andhra Pradesh Act No.33 of 1998 and again by Andhra Pradesh Act No.26 of 2000. The amendment made in 1998 does not have any bearing on the decision of these appeals and writ petition. Therefore, we do not consider it necessary to advert to the same. However, the amendment made in 2000 is of far reaching significance. Therefore, it will be apposite to notice the background in which the said amendment was made.

In the meeting of the State Election Commissioners held on 18-4-2000, the Election Commission of India proposed that there should be

a common electoral roll for all elections i.e. to the House of the People, State Legislative Assemblies or the Panchayat Raj Institutions. This was accepted by all SECs. because it was found that the electors for all the elections were common, the basic qualification for their enrolment

as electors, namely, Indian citizenship, qualifying age of 18 years and ordinary residence in the ward/constituency were also the same, and the administrative machinery responsible for the preparation, revision and updating the electoral rolls for all the elections were also the same at the ground level. It was felt that the preparation of separate electoral rolls for various bodies was a waste of national money and duplication of administrative efforts and energy. It was also noted that the States of Assam, Tamil Nadu, West Bengal, Goa, Madhya Pradesh, Orissa and Rajasthan had already adopted the Assembly electoral rolls for elections to their local bodies and the rolls for Wards of Panchayats and Zilla Parishads were prepared by the method of 'cut and paste'.

In the light of the deliberations of the aforesaid meeting, the State Commission proposed an amendment in Section 11 of the 1994 Act. This was accepted by the State Government. As a sequel to this, the Andhra Pradesh Panchayat Raj (Third Amendment) Ordinance, 2000 was promulgated by the Governor on 31-7-2000. The Ordinance was replaced by the Andhra Pradesh Panchayat Raj (Third Amendment) Act, 2000. An extract of the statement of objects and reasons, incorporated in the Bill presented before the Legislative Assembly, which brings out the rationale of the amendment reads as under:

“Statement of objects and reasons:

Section 2 of the Andhra Pradesh Panchayat Raj Act, 1994 contemplates two qualifying dates, namely, 1st January and 1st July of the year for preparation and publication of the electoral rolls resulting in not only additional work, but huge expenditure

to the State exchequer. In order to adopt the Assembly electoral roll without any further exercise like draft publication and final publication, it is proposed to amend the qualifying date as the 1st January of the year for the purpose of Panchayat Raj elections.”

By Section 3 of the Amendment Act, the words “draft of the” were deleted from Section 11 (1). By Section 3 (i)(c) of the Amendment Act, a proviso was inserted in sub-section (1) of Section 11 so that any amendment, transposition or deletion of any entry in the electoral roll, or any inclusion of names in the electoral roll of the Assembly constituencies concerned made by the Electoral Registration Officer under Sections 22 or 23 of the 1950 Act up to the date of notification of election for Panchayats could be incorporated in the electoral roll of the gram panchayat.

As a sequel to the amendment of Section 11, the State Government superceded all the existing rules relating to preparation and publication of electoral rolls and lodging of claim/objection and appeal and enacted new set of rules, which were published vide G.O.Ms.No.254 dated 4-8-2000.

We shall now deal with the first question posed hereinabove. A careful reading of Section 11 (amended) makes it clear that the electoral roll for gram Panchayat is to be prepared by the person authorized by the State Election Commissioner in such manner and by reference to such qualifying date as may be prescribed. The term ‘qualifying date’ has been defined in Section 2 (34) to mean the first day of January of the year in which the electoral roll is prepared and published. The word ‘prescribed’ has been defined under Section 2 (30) to mean ‘prescribed by the Government by rules made under the Act’. The 2000 Rules occupy this field. Amended Section 11 (1) also

provides that the electoral roll for the gram panchayat shall be prepared on the basis of electoral roll for the Assembly Constituency published under the 1950 Act, as revised or amended under the said Act up to the qualifying date. Proviso to this Section, which was added by the Amendment Act No.26 of 2000 lays down that any amendment, transposition or deletion of any entries in the electoral roll or any inclusion of names in the electoral roll of the Assembly constituencies concerned, which may be made by the Electoral Registration Officer under Sections 22 or 23 of the 1950 Act up to the date of election notification shall be carried out in the electoral roll of the gram panchayat. No doubt, Rule 2 of the 2000 Rules specifies the District Panchayat Officer as the person who shall prepare the electoral roll and Rule 5 provides for printing and publication of electoral roll by the District Panchayat Officer, but if these rules are read in conjunction with the amended Section 11 (1) and notification dated 1-5-2006 issued by the State Commission, it becomes clear that the District Panchayat Officers were duly authorized by none else than the State Commission to prepare and publish electoral rolls of all the gram panchayats in their respective districts with reference to 1-1-2006 as the qualifying date.

It is also significant to notice that the State Commission had initiated the process for revision of the Assembly electoral rolls with reference to 1-1-2006 as the qualifying date as early as on 27-9-2005 when press note was issued incorporating a comprehensive time schedule for publication of draft rolls, period for filing claims and objections and disposal thereof, preparation and printing of supplements and additions, deletions and corrections and final publication of electoral roll. This was in tune with the scheme of the 1960 Rules. On 24-10-2005, the Secretary of the State Commission

addressed letter to the State Presidents and General Secretaries of all recognized and registered political parties to motivate the public to file necessary claims and objections for inclusion and deletion of names. After completion of this exercise, the State Commission issued notification No.194/SEC-B2/2006 dated 1-5-2006 whereby it directed all the District Panchayat Officers to prepare and publish on 8-5-2006, the electoral rolls of all the gram panchayats. Even thereafter, various press notes were issued informing the public that claims and objections could be before the Electoral Registration Officers of the Assembly Constituencies. Circulars were also issued incorporating therein the instructions for District Collectors, District Panchayat Officers and others giving them guidance for preparation and publication of electoral rolls and disposal of the claims and objections.

If Section 11 had not been amended and the procedure for incorporation of amendment, transposition or deletion of entries in the electoral roll of the Assembly Constituencies or any inclusion of name in such electoral roll had not been statutorily engrafted in the 1994 Act and corresponding provision had not been made in the rules framed under Section 268 (1) read with Section 11 of the 1994 Act, perhaps the appellants may have found it difficult to defend the preparation and publication of electoral rolls by the District Panchayat Officer, but, in view of the amended Section 11 (1) and its proviso, the role of the District Panchayat Officer in the matter of preparation and publication of electoral roll is extremely limited. He has to prepare electoral roll for gram panchayat by taking into consideration the correct electoral roll of the Andhra Pradesh Legislative Assembly Constituency, prepared and published under the 1950 Act insofar as it relate to the concerned village. He is also required to keep in view the amendments made in the electoral roll of the Assembly Constituency after following the

procedure prescribed under Sections 22 or 23 of the 1950 Act and Rules 10 to 21 of the 1960 Rules.

To put it differently, after the amendment of Section 11 (1), virtually nothing is left to the discretion of the District Panchayat Officer because he has to prepare electoral roll on the basis of the current electoral roll of the Andhra Pradesh Legislative Assembly Constituency, as prepared and published under the 1950 Act insofar as they relate to the village concerned. While doing so, the District Panchayat Officer is required to take into account amendments made in the electoral roll of the Assembly Constituency from time to time. Likewise, if Rule 6 of the 2000 Rules is read with proviso to amended Section 11 (1), no discretion is left with the District Panchayat Officer in the matter of carrying out amendment, transposition, deletion or addition in the electoral roll of the gram panchayat. He is required to carry out any amendment, transposition or deletion of the entries made in the electoral roll or any inclusion of names in the electoral roll of the Assembly constituencies concerned. These amendments etc. are required to be made by the Electoral Registration Officer under Sections 22 or 23 of the 1950 Act read with the procedure prescribed under Rules 12 to 21 of the 1960 Rules. The detailed procedure prescribed under the 1960 Rules postulates publication of draft roll so as to enable the public to inspect the same and lodge claims and objections. Every claim for inclusion of name in the electoral roll is to be lodged in Form-6. An objection to the inclusion of a name in the roll is to be lodged in Form-7. Rule 14 prescribes the manner of lodging claims and objections. Rule 17 provides for rejection of certain claims and objections which are not lodged within the prescribed period or in the form and manner specified in Rules 10, 12, 13 and 14. Rule 18 contemplates acceptance of claims and objections without enquiry.

Rules 19, 20 and 21 provides for an enquiry into and hearing on the claims and objections and decision thereof. In terms of Rule 22, the Registration Officer is required to prepare the list of amendments to carry out the decisions under Rules 18, 20, 21 and 21A and publish the same. Rule 23 of the Rules provide for remedy of appeal from any decision of the Registration Officer under Rule 20, 21 or 21A. Once the claims and objections are lodged and decided and necessary amendment by way of inclusion or exclusion is carried out in the electoral roll of the Assembly Constituency of the particular village, the same has to be carried out in the electoral roll of the gram Panchayat in terms of proviso to Section 11 (1) and (2) read with Rule 6 of the 2000 Rules.

Shri Ramachandra Rao did make an argument that notification dated 1-5-2006 was not published in the official gazette and, therefore, the legitimacy of the direction given by the State Commission to the District Panchayat Officers to prepare and publish the electoral rolls of all the gram panchayats cannot be traced in Section 11 (1), but we have not felt impressed. Section 11 (1) merely speaks of authorization given by the State Commission. It nowhere lays down that the authorization must be by a notification published in the official gazette as defined in Section 2 (25) of the 1994 Act. Thus, the direction given by the State Commission to the District Panchayat Officers vide notification dated 1-5-2006 to prepare and publish electoral rolls of the gram panchayats on 8-5-2006 cannot be held to be violative of Section 11 (1) of the 1994 Act. If the said direction is read in the light of the provisions contained in Article 243K (3) and Section 210 of the 1994 Act, it becomes clear that the direction given by the State Commission was in accordance with the scheme of the Constitution and the law made by the State Legislature under clause (4) of Article 243K.

Therefore, the electoral rolls prepared and published by the District Panchayat Officers cannot be declared ultra vires the provisions of Article 243K or Section 11 of the 1994 Act and the contrary view expressed by the learned Single Judge cannot be upheld.

The judgment of the Larger Bench in **S. Fakruddin's** case (supra), which has been extensively quoted and relied by the learned Single Judge for invalidation of the electoral rolls prepared by the District Panchayat Officers and which constitute the sheet anchor of the arguments of Shri S. Ramachandra Rao cannot be made basis for approving the order under challenge because –

- 1) while disposing of the appeals preferred by the State Government and the State Commission, the Supreme Court specifically made it clear that the aggrieved parties can initiate proceedings before the appropriate forum and the same will be decided without being influenced by the judgment of the High Court.
- 2) In **Prakasam District Sarpanchas Association v. Govt. of A.P.** (supra), the Division Bench has unequivocally held that the judgment of the Larger Bench is not available for implementation and is not binding on the respondent. {It appears that attention of the learned Single Judge was not drawn to order dated 8-4-1997 passed by the Supreme Court and the judgment of the Division Bench in **Prakasam District Sarpanchas Association v. Government of A.P.** (supra). Else, he may not have relied on the judgment of the Larger Bench for invalidation of the electoral rolls.}
- 3) In **S. Fakruddin's** case (supra), the Larger Bench found that the State Government had notified an authority other than the one authorized by the State Commission for the purposes of

preparation and publication of the electoral roll and this was ultra vires the Section 11 of the 1994 Act and Article 243 of the Constitution.

- 4) In the cases before us, the writ petitioners did not challenge the vires of Section 11 (1) (amended) and the State Commission had, as a matter of fact, issued notification dated 1-5-2006 and directed the District Panchayat Officers to prepare and publish electoral rolls of all the gram panchayats in their respective districts with reference to 1-1-2006 as the qualifying date.
- 5) In terms of Article 243 read with Section 210 of the 1994 Act, all the officers and staff employed in connection with preparation, revision and correction of the electoral rolls and for conduct of all elections are treated to be on deputation to the State Commission and during the period of deputation, they are subject to the control, superintendence and discipline of the State Commission. Therefore, all actions done by the District Panchayat Officer under Rules 2, 3 and 5 of the 2000 Rules read with notification dated 1-5-2006 will be deemed to have been done under the superintendence, direction and control of the State Commission.

The next question which needs consideration is whether Section 11 (1) of the 1994 Act read with the 2000 Rules impinges upon the power of supervision, direction and control vested in the State Commission.

The argument of Shri S. Ramachandra Rao, Senior Counsel appearing for the writ petitioners, including Shri N. Sekhar who is respondent in Writ Appeal Nos.709 and 710 of 2006, that the Election

Commission has the exclusive power of superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to the Panchayats and law enacted by the State Legislature under Clause (4) of Article 243K cannot impinge on this power of the State Commission and further that the 2000 Rules do not have any discretion with the State Commission in the matter of preparation and publication of the electoral rolls or for making addition or deletion therein and, as such, the same are liable to be struck down in the light of the judgment of the Larger Bench sounds attractive, but lacks merit.

Clause (4) of Article 243K begins with the expression “subject to the provisions of this Constitution” and lays down that the Legislature of the State may by law, make provisions with respect to all matters relating to, or in connection with, elections to the panchayats. A combined reading of clauses (1) to (4) of Article 243K makes it clear that the State Commission is the repository of the power of superintendence, direction and control of the preparation of electoral rolls and conduct of all elections to the panchayats, but this power has to be exercised in consonance with the law enacted by the State Legislature in matters relating to or in connection with elections to the panchayats. The Court cannot strike down the law enacted by the competent State Legislature by presuming that the same trenches upon the power vested in the State Commission under clause (1) of Article 243K. If the law enacted by the State Legislature under clause (4) of Article 243K is challenged on the ground that it impinges upon the power vested in the State Commission under clause (1), the Court must examine the scheme of enactment as a whole and try to harmonise the same with the State Commission’s power of superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to the panchayats and any such law

should be declared ultra vires the provisions of the Constitution only if there is a direct conflict between the constitutional mandate and the provisions of the State legislation or there is no possibility of harmonizing the State law with the power of the State Commission under Article 243K (1).

In the present case, there is no conflict between the State Commission's power of superintendence, direction and control in the matter of preparation of electoral roll and conduct of elections to the panchayats and the provisions contained in the 1994 Act and the 2000 Rules to which reference has been made hereinabove. Rather, the law enacted by the State Legislature not only recognizes the constitutional position of the State Commission, but also facilitates exercise of the power of superintendence, direction and control vested in it under clause (1) of Article 243K. Section 201 (1) of the 1994 Act declares that all elections to the Panchayat Raj institutions shall be held under the supervision and control of the State Commission and, for this purpose, it shall have power to give such directions as it may deem necessary to the Commissioner, District Collector or any other officer or servant of the government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under this Act. Sub-section (2) of Section 201 lays down that the preparation of electoral rolls for the conduct of all elections under this Act shall be done under the supervision and control of the State Commission. Sub-section (3) obligates the State Government to provide necessary staff to the State Commission and sub-section (4) casts a duty on the State to place at the disposal of the Commission such staff of the State Government, Gram Panchayats, Mandal Parishads and Zilla Parishads for the conduct of elections for which request may be made by the State Commission. Sub-section (5) empowers the State Election

Commissioner to delegate his power to such officers, as he may deem necessary. Section 210 (1) and (2) contain deeming provision. Sub-section (1) of Section 210 lays down that any officer or staff employed in connection with preparation, revision and correction of the electoral rolls for and the conduct of all elections shall be deemed to be on deputation to the State Election Commissioner for the period during which they are so employed and such officers and staff shall during that period, be subject to the control, superintendence and discipline of the State Election Commissioner. Similar provision is contained in sub-section (2) of Section 210 in respect of Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer appointed under the Act and any police officer designated for the time being by the State Government for the conduct of any election. Section 11 (1) empowers the State Commission to authorize any person for preparation of the electoral roll for gram panchayat. Thus, there is no conflict between the provisions of Article 243K (1) and those contained in the 1994 Act. The District Panchayat Officers who are designated in the 2000 Rules as the authority competent to prepare and publish the electoral rolls are also required to act under the control and superintendence of the State Commission. Thus, the argument of the learned counsel that there is a conflict between Article 243K(1) and the provisions of the 1994 Act, which found favour with the learned Single Judge, is clearly untenable.

Before parting with this aspect of the matter, we may usefully refer to two judgments of the Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner, New Delhi**^[6] and **A.C. Jose v. Sivan Pillai** (supra). In **Mohinder Singh Gill** (supra), the Constitution Bench of the Supreme Court considered whether the Election Commission can cancel the election of a constituency after it has been held but

before the formal declaration of the result has been made. While interpreting Article 324, which is substantially in pari materia to Article 243K (1), Krishna Iyer, J, who spoke for the Bench, observed:

"Article 324, which we have set out earlier, is a plenary provision vesting the whole responsibility for national and State elections and, therefore, the necessary powers to discharge that function. It is true that Art. 324 has to be read in the light of the constitutional scheme and the 1950 Act and the 1951 Act. Sri Rao is right to the extent he insists that if competent legislation is enacted as visualized in Article 327 the Commission cannot make himself free from the enacted prescriptions. And the supremacy of valid law over the Commission argues itself, No one is an imperium in imperio in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Art. 324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system..... Article 324, in our view operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct' of all elections' are the broadest terms."

In that case, the Supreme Court laid down several propositions including the following:

"Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission shall act in conformity with not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition. Secondly the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order, viz., elections."

In **A.C. Jose v. Sivan Pillai** (supra), the Supreme Court considered the question whether the Election Commission of India could direct casting of votes by mechanical process. It was argued that the Commission being a creature of the Constitution itself, its plenary powers flowing directly from Article 324 will prevail over any Act passed by the Parliament or Rules made thereunder. It was contended that the manner of voting was a matter coming within the ambit of Articles 324 and 327, which empowered the Parliament to make laws in respect of matters relating to or in connection with the elections to the Parliament or the State Legislatures and would be deemed to be subsidiary to the power contained in Article 324 and if there was any conflict between a law enacted by the Parliament and the powers given to the Commission regarding regulating the conduct of elections to Parliament then that law would yield to Article 324. The Supreme Court noticed the provisions contained in Part XV of the Constitution and observed that an absolute unanalysed power given to the Commission without giving any guidelines would itself destroy the basic structure of the rule of law. The Supreme Court further observed:

“Arts. 324 to 329 as an integral part of the same scheme collaborating rather than colliding with one another. Moreover, a perusal of Arts. 324 to 329 would reveal that the legislative powers in respect of matters relating to Parliament or the State Legislatures vests in Parliament and in no other body. The Commission would come into the picture only if no provision has been made by Parliament in regard to the elections to the Parliament or State Legislatures. Furthermore, the power under Art. 324 relating to superintendence, direction and control was actually vesting of merely all the executive powers and not the legislative powers. In other words, the legislative power of Parliament or of the legislature of a State being made subject to Art. 324 only means that no law made by Parliament under Art.

327 or by a State Legislature under Art. 328 can take away or deprive the Commission of the executive power in regard to matters entrusted to it. viz. superintendence, direction and control of elections.”

It is significant to note that Article 243K (1) is substantially similar to Article 324 and Article 243K (4) is substantially similar to Articles 327 and 329 of the Constitution. Therefore, the ratio of the last mentioned judgment deserves to be applied for interpreting Article 243K (1) and Article 243K (4) of the Constitution.

On the basis of the above discussion, we hold that Section 11 (1) of the 1994 Act is not ultra vires the constitutional mandate of Article 243K (1) of the Constitution.

This leaves us with the last question whether by virtue of the 2000 Rules, constitutional, legislative and subordinate legislation vacuum has been created.

Though it may appear repetitive, we consider it necessary to mention that after the amendment of Section 11 (1) by Andhra Pradesh Act No.26 of 2000 and incorporation of proviso to Section 11 (1), little discretion is left with any person authorized by the State Commission under Section 11 (1) in the matter of preparation and publication of electoral roll. In terms of Section 11 (1), the person concerned is required to prepare the electoral roll keeping in view the electoral roll for the Assembly Constituency published under the 1950 Act, as revised or amended under the said Act up to the qualifying date insofar as it relate to the concerned village. In other words, the electoral roll of the gram panchayat should ordinarily be a replica of the electoral roll of that village prepared for the Assembly Constituency. In terms of proviso to Section 11 (1), any amendment, transposition or deletion of any entries in the electoral roll or any

inclusion in the names of the electoral roll of the Assembly Constituencies concerned which may be made by the Electoral Registration Officer under Sections 22 or 23 of the 1950 Act up to the date of election notification is required to be carried out in the electoral roll of the gram panchayat. The exercise for amendment etc. is to be carried out as per the detailed provisions contained in the 1960 Rules, which not only provide for lodging of claims and objections in the prescribed formats, but also provides for enquiry, hearing and decision of such claims and objections. Any person feeling aggrieved by the order passed by the Electoral Registration Officer can challenge the same by filing appeal. What the District Panchayat Officer is required to do under Rule 6 of the 2000 Rules is nothing but to carry out necessary amendments in the gram panchayat electoral roll, but he cannot suo motu revise the rules by way of deletions or additions or modifications. Since the 1960 Rules which are integral part of the 1950 Act contains a comprehensive scheme for preparation and publication of the electoral rolls for the Assembly Constituencies and also provide for amendment, deletion, inclusion of the entries in such electoral rolls and remedy of appeal is available to a person aggrieved by the rejection of his claim or objection and the Assembly Constituency rolls are treated as mother rolls for the purpose of preparing the electoral roll for the gram panchayat, there was no justification to retain the rules, which were circulated vide G.O.Ms.Nos.879, 898, 913 and 923.

For the reasons mentioned above, we hold that by virtue of the 2000 Rules, no constitutional, legislative or sub-legislative vacuum has been created.

In the result, the appeals are allowed. Order dated 20-6-2006 passed by the learned Single Judge is set aside and writ

petition Nos.10965 of 2006 and batch filed for quashing notification dated 10-6-2006 issued by the State Commission and the electoral rolls prepared in furtherance of the notification dated 1-5-2006 are dismissed. For the same reasons, Writ Petition (SR) No.72636 of 2006 filed for quashing notification dated 9-7-2006 is also dismissed. However, it is made clear that this judgment shall not affect the right of the writ petitioners to avail appropriate legal remedies to question the elections held in pursuance of notification dated 10-6-2006 and 9-7-2006. We also make it clear that the disposal of election petitions etc. filed by the aggrieved persons shall not be influenced by this judgment.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

December 18, 2006

svs

Note:

L.R. copy be marked:

(By order)

svs

PS to HCJ

[\[1\]](#) AIR 1996 AP 37 = 1995 (2) ALD 589

[\[2\]](#) AIR 1984 SC 921

[\[3\]](#) AIR 1957 SC 304

[\[4\]](#) 2001 (1) ALT 138 (D.B.)

[\[5\]](#) (2000) 5 SCC 181

[\[6\]](#) AIR 1978 SC 851